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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

January 2, 1998

Via Hand Delivery

Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, Room 222
Washington, D.C. 20554

Re: Aliant Communications Co.
Petition for Reconsideration, WT Docket No. 96-162

Dear Ms. Salas:

On behalf of Aliant Communications Co. ("Aliant"), transmitted herewith are an original and eleven (11) copies of a Petition for Reconsideration of the Report and Order in WT Docket No. 96-162 regarding the Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, released on October 3, 1997.

If you have any questions with respect to this matter, please do not hesitate to call.

Very truly yours,

Jeanne W. Stockman

Jeanne W. Stockman

Enclosures

No. of Copies rec'd 0 + 11
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commissions Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services	)	WT Docket No. 96-162
	)	
Implementation of Section 601(d) of the Telecommunications Act of 1996	)	

To: The Commission

PETITION FOR RECONSIDERATION

Aliant Communications Co. ("Aliant"), by its attorneys, and pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. § 1.429 (1997), hereby respectfully submits this Petition for Reconsideration ("Petition") of the Federal Communications Commission's ("FCC's" or "Commission's") Report and Order ("R&O") in the above-captioned proceeding.[1] Specifically, Aliant asks that the FCC, in mandating the spin-off of wireline cellular systems of in-region incumbent local exchange carriers ("LECs"), which have been operating for more than a decade within the LEC structure, waive the provisions of Section 32.27 of the Commission's Rules to allow for the transfer of the assets associated with those cellular operations to a separate affiliate at book value rather than at fair market value, as currently required by the rules. In support of this Petition, the following is respectfully shown:

[1]This R&O was released by the Commission on October 3, 1997, and was published in the Federal Register on December 3, 1997. This Petition is being filed within thirty days of that date of publication in accordance with Section 1.429 of the Commission's Rules.

BACKGROUND

Aliant is engaged in the local exchange telephone business, serving customers in 22 of 93 counties in southeastern Nebraska. Since 1987, Aliant has also been the licensee of the wireline cellular authorization for the Lincoln, Nebraska MSA, Market No. 172(B1). At the time when Aliant first entered into cellular, the economies of establishing the cellular operation within the LEC allowed Aliant to introduce service to the public more quickly and economically than a separate structural affiliate could have been established, with all of the attendant costs associated therewith. This practice is fully consistent with the Commission's rules effective for the full sixteen (16) years of the industry's existence. Indeed, in the mid-1980s, a mid-sized independent LEC such as Aliant was of a size that enabled it to have the financial resources to hold cellular authorizations in its own right. Most smaller LECs formed partnerships to enable them to have the financial wherewithal to construct and operate cellular systems in the nascent cellular industry, while the large independents, such as GTE and Contel, established a large scale cellular presence that supported a separate structural affiliate. All Bell Operating Companies ("BOCs") were required under § 22.903 to establish separate affiliates to hold their cellular authorizations and to conduct their cellular operations. Significantly, to the best of Aliant's knowledge, today it is one of very few, if not the only, incumbent LEC which holds cellular wireline licenses without a separate structural affiliate.

Because of its size, Aliant does not fall within the rural telephone company exception of § 20.20(d) of the newly adopted rules. Aliant therefore finds itself in the position of being one of a handful, *if not the only*, wireline cellular licensee facing the mandatory spin-off of its cellular holdings, more than a decade after having instituted cellular service. Accordingly, Aliant is clearly an interested party in this proceeding.

DISCUSSION

Aliant does not take issue with either the underlying basis for the Commission's rule change or the actual requirement of establishing a structurally separate affiliate to hold and operate the in-region cellular systems of incumbent LECs. However, while the R&O is concerned with the costs associated with mandating mid-sized LECs to establish and maintain separate affiliates, the R&O is silent with respect to the costs and potential adverse impact which will result under the Commission's accounting rules if an incumbent LEC is required to spin-off a mature cellular system and record that transaction at the "fair market value" of the cellular operation as it exists today, as opposed to the recording that transaction at the value of the spun-off assets as currently reflected on the LECs books ("book value"). The Commission's affiliate transaction rules clearly require fair market value treatment. The net result is an inter-company gain from the spin-off of such assets. While the realization of such a gain could be deferred, the potential adverse impact at the time such a gain is realized would have a substantial impact on a company the size of Aliant.

The underlying purpose of adopting the new rules was not to penalize LECs, such as Aliant, which have long-offered in-region cellular service. Indeed, in the R&O the Commission stated that the new rules were not intended to have an onerous and burdensome effect on LECs who provide in-region CMRS.[2] Rather, those rules were designed to be "less burdensome and more narrowly tailored" than the previous rules which applied only to BOCs and were intended only to restrain potential LEC anti-competitive behavior.[3] The R&O is replete with language indicating that the FCC

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[2] R&O ¶ 56.

[3] *Id.*

carefully considered much of the potential adverse economic impact of these rule changes on in-region LECs, attempting to balance that impact with the need to meet its stated purpose. However, the R&O ignores the accounting implications of the required spin-offs where, as with the case of Aliant, the fair market value of the mature operating system is substantially greater than the book value of the assets of the cellular operation. Aliant submits that allowing the resultant transactions to be recorded at book value would not in any way frustrate the stated purpose behind the rule change. Indeed, under the circumstances, it would appear that grant of the limited relief sought herein would be equitable to LECs such as Aliant that have justifiably relied upon the Commission's previously allowed structure.

Aliant is ready to comply with the Commission's new rules. Indeed, in November of 1996, Aliant filed the requisite applications for the *pro forma* assignment of its licenses to its separately structured cellular affiliate, Aliant Cellular Inc.[4] In that filing, Aliant established how the public interest would be served by allowing it to consolidate its cellular operations under this single-purpose affiliate.[5] Prior to filing that application, Aliant filed a Petition For Waiver of Section 32.27(c) of the Commission's Rules (AAD No. 96-131) to seek the same accounting treatment sought herein: the ability to record the transfer of the cellular assets to the separate affiliate at book value as opposed to fair market value. While Aliant was aware that the grant of the waiver was within the

[4]See FCC File Nos. 00084-CL-AL-97 and 20682-CD-AL-97.

[5]As the Commission is aware, in 1995 Aliant acquired control of Nebraska Cellular Telephone Company (currently known as Aliant Cellular Inc.), the wireline cellular licensee for all of the RSAs within the state of Nebraska. Upon consummation of that transaction, the spin-off of Aliant's Lincoln MSA cellular operation to that same, single-purpose, separate structural affiliate would result in economies and operational efficiencies previously unavailable to Aliant in conjunction with its single Lincoln cellular operation.

discretion of the Commission's Accounting and Audits Division ("AAD") of the Common Carrier Bureau, Aliant retained the option of not proceeding with the envisioned transaction if the requested waiver was denied.

During the pendency of that waiver request, the subject R&O was released. Aliant then supplemented its waiver request to ensure that the AAD consider the mandate of the subject R&O in evaluating Aliant's waiver request. Aliant's waiver request was denied by the AAD on December 24, 1997.[6] That denial failed to even address the equities of denying the waiver in light of the requirement that Aliant proceed with the spin-off under the R&O. While Aliant intends to seek timely review of that AAD denial, in light of the fact that the new rules will become effective seventy (70) days from the date of publication in the Federal Register and Aliant will be required to proceed with the spin-off of its cellular authorization by that date, Aliant submits that it is appropriate for the Commission to consider, in conjunction with the implementation of the rules adopted under this R&O, the full impact of the required accounting treatment of the resultant transaction.

CONCLUSION

While Aliant is prepared to proceed with the spin-off of its cellular holdings to a separate affiliate, Aliant submits that equity mandates that the FCC's requirement that Aliant do so be accompanied with an equitable waiver of the affiliate transaction rules to the extent necessary to allow the spin-off to be recorded at book value as opposed to fair market value. To do otherwise

[6] A copy of the AAD denial of the Aliant waiver request is appended hereto as Appendix A.

would impose upon a handful of cellular licensees, and possibly Aliant alone, the adverse consequences of transferring its mature cellular system and realizing an inter-company gain on that transfer. Such a consequence is not only inequitable, but is clearly not required to allow the Commission to meet its stated goals in adopting the subject rules which now require the spin-off. Indeed, requiring Aliant to proceed with the spin-off without the appropriate "book value" accounting waiver would be to single out and subject Aliant to inequitable treatment not experienced by any other carrier. This result would clearly be contrary to the stated purpose of the R&O of treating all CMRS carriers equally. For these reasons, Aliant respectfully requests that the Commission reconsider its R&O to the extent that it allow any LECs which spin-off long-existing cellular operations pursuant to the R&O to record that transfer of assets at the book value of the assets being spun-off, as opposed to the fair market value of the mature, operating cellular system.

Respectfully submitted,

ALIANT COMMUNICATIONS CO.

By: Jeanne W. Stockman

Michael K. Kurtis
Jeanne W. Stockman

Its Attorneys

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2000 M Street, N.W.
Suite 600
Washington, D.C. 20036
(202) 328-4500

Dated: January 2, 1998

ATTACHMENT A

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Aliant Communications Co. Petition for	)	AAD No. 96-131
Waiver of Section 32.27(c) of the	)	
Commission's Rules	)	
	)	

ORDER

Adopted: December 24, 1997 **Released:** December 24, 1997

By the Chief, Accounting and Audits Division:

I. INTRODUCTION AND BACKGROUND

1. On July 1, 1996, Aliant Communications Co. (formerly Lincoln Telephone and Telegraph Company, hereinafter "Aliant"), filed a petition for waiver of Section 32.27(c) of the Commission's Rules[1] to record the transfer of cellular and paging assets from Aliant to an affiliated company at net book cost, rather than at fair market value.[2] In response to questions raised by the Commission, additional correspondence was submitted.[3] On January 2, 1997, the Bureau solicited comments on Aliant's petition.[4] No comments were filed. For the reasons discussed below, we deny Aliant's waiver request.

[1] 47 C.F.R. § 32.27(c).

[2] Letter dated July 1, 1996, from Mr. Tony S. Lee, Associate Attorney, Kurtis & Associates, P.C., to Mr William F. Caton, Acting Secretary, FCC.

[3] Additional correspondence was sent and received as follows: Letter dated Aug. 28, 1996, from Mr. Kenneth M. Ackerman, Chief, Accounting Systems Branch to Mr. Tony S Lee, Associate Attorney, Kurtis & Associates, P.C.; Letter dated Sep. 26, 1996, from Mr. Tony S. Lee to Mr. Kenneth M. Ackerman; Letter dated Oct. 24, 1996, from Mr. Kenneth M. Ackerman to Mr. Tony S. Lee; Letter dated Nov. 15, 1996, from Mr. Tony S. Lee to Mr. Kenneth M. Ackerman; Letter dated May 30, 1997, from Mr. Jose Luis Rodriguez to Mr. Tony S. Lee; Letter dated June 19, 1997, from Mr. Tony S. Lee to Mr. Jose Luis Rodriguez; Fourth Supplement to Petition dated October 27, 1997 from Mr. Tony S. Lee to the Chief, Common Carrier Bureau

[4] Public Notice issued on Jan 2, 1997, DA 96-2153

III. DISCUSSION

5. The Commission's rules state that waiver of sections of Part 32 may occur on a written request from a telecommunications company, provided that the waiver is in the public interest, and each request for waiver expressly demonstrates that: (1) existing peculiarities or unusual circumstances warrant a departure from a prescribed procedure or technique; (2) a specifically defined alternative will result in a substantially equivalent or more accurate portrayal of operating results or financial conditions, consistent with the principles of Part 32; and, (3) the application of such alternative procedure will maintain uniformity in substantive results among telecommunication companies.[11] For the reasons set forth below, we find that Aliant has not made a case that warrants a waiver to record the transfer of assets at net book cost, rather than at fair market value.

6. Aliant's argument that transferring its wireless assets to an affiliate would serve the public interest is irrelevant because such transfers are mandated by the Commission. Subsequent to Aliant's filing of the petition for waiver, the Commission recently noted that a local exchange carrier ("LEC") must provide its in-region CMRS through a separate corporate affiliate and that a LEC's transactions with its CMRS affiliate should be subject to the Commission's joint cost and affiliate transaction rules.[12] Our affiliate transaction rules specifically require that valuation of assets transferred from regulated accounts to non-regulated affiliates be recorded at the higher of net book cost or fair market value.[13]

7. Aliant fails to show, and we find no unusual circumstances to warrant departure from the valuation methods prescribed in section 32.27. Aliant also does not demonstrate how its proposal would result in a more accurate portrayal of operating results, consistent with the principles of Part 32. Aliant argues that recording the transfer at net book cost portrays a financial result that is consistent with the generally accepted accounting principles ("GAAP"), which requires assets transferred between entities of comon control to be accounted for at historical cost. Part 32's Uniform System of Accounts ("USOA") provisions for affiliate transactions are based on regulatory considerations other than GAAP. For example, section 32.27(c) was intended to protect competitive practices and to prevent subsidization of unregulated affiliates by regulated operations. The USOA departs from GAAP in order to meet regulatory considerations such as the protection of ratepayers and preservation of competitive practices.

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[11] 47 C.F.R. § 32.18.

[12] *See* Amendment of Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of CMRS, *Report and Order*, 1997 WL 609315, WTB Docket No. 96-162 (rel. Oct. 3, 1997)

[13] 47 C.F.R. § 32.27. *See* Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, 2 FCC Rcd 1298 (1987) (Joint Cost Order), *Recon.*, 2 FCC Rcd 6283 (1987); *Further Recon.*, 3 FCC Rcd 6701 (1988), *aff'd sub nom.* Southwestern Bell Corp. v. FCC, 896 F. 2d 1378 (D.C. Cir. 1990).

2. Aliant is an incumbent local exchange carrier that also provides wireless services. Aliant is the licensee of the wireline cellular station serving the Lincoln, Nebraska Metropolitan Statistical Area and the licensee of five common carrier paging stations. Its nonregulated affiliate, Nebraska Cellular Telephone Corporation ("NCTC"),[5] provides cellular service throughout Nebraska. NCTC is the licensee in all 10 Rural Statistical Areas ("RSA") within Nebraska and conducts the day-to-day operation of all of the Nebraska RSAs. Lincoln Telecommunications Company ("LTC"),[6] Aliant and NCTC's parent company, intends to transfer Aliant's cellular and paging licenses to NCTC in order to consolidate its wireless holdings into a single operation.[7]

3. Section 32.27 of the Commission's rules prescribes how a carrier must record affiliate transactions in its books of account. Section 32.27(c) governs the valuation of assets transferred from the regulated accounts of the carrier to a nonregulated affiliate. This rule requires that a carrier record asset transfers at tariffed rates if such a rate exists or at the prevailing market rate held out to the general public.[8] For asset transfers that are neither tariffed nor subject to a prevailing market rate, the rule requires a carrier to record all such transfers at the higher of net book cost or estimated fair market value when the carrier is the seller, and at the lower of net book cost or estimated fair market value when the carrier is the purchaser.[9]

II. THE PETITION

4. Aliant requests a waiver of Section 32.27(c) so that it may record the transfer of cellular and paging assets to NCTC at net book cost, rather than at fair market value. Aliant contends that the circumstances surrounding its transfer merit a departure from the rule because recording the transfer at net book cost would be in the public interest and would result in a more accurate portrayal of the actual financial transaction. Specifically, Aliant explains that the transfer of the cellular and paging assets to NCTC will result in a more cost-effective operation.[10]

[5] NCTC is now operating under the name of Aliant Cellular, Inc. but to avoid confusion in this Memorandum, we continue to refer to it as NCTC.

[6] LTC is now operating under the name of Aliant Communications, Inc., but we refer to it as LTC in this Memorandum.

[7] Aliant's July 1, 1996, letter at ¶¶ 4-6.

[8] 47 C.F.R. § 32.27(c).

[9] 47 C.F.R. § 32.27.

[10] Aliant's July 1, 1996, letter at ¶ 4.

III. DISCUSSION

5. The Commission's rules state that waiver of sections of Part 32 may occur on a written request from a telecommunications company, provided that the waiver is in the public interest, and each request for waiver expressly demonstrates that: (1) existing peculiarities or unusual circumstances warrant a departure from a prescribed procedure or technique; (2) a specifically defined alternative will result in a substantially equivalent or more accurate portrayal of operating results or financial conditions, consistent with the principles of Part 32; and, (3) the application of such alternative procedure will maintain uniformity in substantive results among telecommunication companies.[11] For the reasons set forth below, we find that Aliant has not made a case that warrants a waiver to record the transfer of assets at net book cost, rather than at fair market value.

6. Aliant's argument that transferring its wireless assets to an affiliate would serve the public interest is irrelevant because such transfers are mandated by the Commission. Subsequent to Aliant's filing of the petition for waiver, the Commission recently noted that a local exchange carrier ("LEC") must provide its in-region CMRS through a separate corporate affiliate and that a LEC's transactions with its CMRS affiliate should be subject to the Commission's joint cost and affiliate transaction rules.[12] Our affiliate transaction rules specifically require that valuation of assets transferred from regulated accounts to non-regulated affiliates be recorded at the higher of net book cost or fair market value.[13]

7. Aliant fails to show, and we find no unusual circumstances to warrant departure from the valuation methods prescribed in section 32.27. Aliant also does not demonstrate how its proposal would result in a more accurate portrayal of operating results, consistent with the principles of Part 32. Aliant argues that recording the transfer at net book cost portrays a financial result that is consistent with the generally accepted accounting principles ("GAAP"), which requires assets transferred between entities of comon control to be accounted for at historical cost. Part 32's Uniform System of Accounts ("USOA") provisions for affiliate transactions are based on regulatory considerations other than GAAP. For example, section 32.27(c) was intended to protect competitive practices and to prevent subsidization of unregulated affiliates by regulated operations. The USOA departs from GAAP in order to meet regulatory considerations such as the protection of ratepayers and preservation of competitive practices.

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[11] 47 C.F.R. § 32.18.

[12] *See* Amendment of Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of CMRS, *Report and Order*, 1997 WL 609315, WTB Docket No. 96-162 (rel. Oct. 3, 1997)

[13] 47 C.F.R. § 32.27. *See* Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, 2 FCC Rcd 1298 (1987) (Joint Cost Order), *Recon.*, 2 FCC Rcd 6283 (1987); *Further Recon.*, 3 FCC Rcd 6701 (1988), *aff'd sub nom.* Southwestern Bell Corp. v. FCC, 896 F.2d 1378 (D.C. Cir. 1990).

Recording the transfer at net book cost would result in a portrayal of operating results that would be inconsistent with the principles of Part 32.[14]

8. Aliant has not persuasively demonstrated that: (1) the waiver would be in the public interest; (2) its particular circumstances warrant a departure from compliance with our rules; and (3) its proposal would result in an accurate portrayal of financial conditions consistent with Part 32. Because the carrier has failed to meet these substantive requirements of section 32.18, we need not determine whether Aliant's proposal would maintain uniformity in substantive results among telecommunication companies. For the foregoing reasons, we deny Aliant's request for waiver.

9. With regard to the determination of fair market value of the assets to be transferred, Aliant states that there are approximately 221,000 POPs[15] in the Lincoln market which would produce a market value estimate of $38,675,000 at $175 per POP.[16] Aliant calculates the net book cost to be $15,186,600.[17] Aliant acknowledges that it has not performed a specific calculation or evaluation of the Lincoln cellular franchise. It based the $175 per POP figure on a mid-point of suggested ranges from a study of the Omaha cellular market.[18] Aliant states that an evaluation of the Lincoln cellular franchise would be both expensive and time-consuming, and had not been done.[19] Should the transfer proceed, Aliant may use the estimate of $175 per POP or establish a more precise fair market value for the Lincoln franchise. The determination of fair market value and net book cost at the time of transfer will be subject to audit review.

10. Finally, in our *Accounting Safeguards Order*[20] we concluded that when costs are reallocated from regulated to nonregulated activities, exogenous adjustments must be made to price cap indices in accordance with section 61.45(d)(1)(v).[21] Because a portion of the assets were included in the regulated accounts when Aliant's price cap indices were initially established,

[14] *See* 47 C.F.R. § 32.1

[15] POP refers to the total population that can be served using the available frequency bandwidth licensed to the company.

[16] Letter dated Sep. 26, 1996, from Mr. Tony S. Lee to Mr. Kenneth M. Ackerman, Exhibit 1.

[17] Letter dated Sep. 26, 1996, from Mr. Tony S. Lee to Mr. Kenneth M. Ackerman, Exhibit 2.

[18] Letter dated Jun 19, 1997, from Mr. Tony S. Lee to Mr. Jose Rodriguez at page 3.

[19] Letter dated Sep. 26, 1996, from Mr. Tony S. Lee to Mr. Kenneth M. Ackerman, Exhibit 1.

[20] Implementation of the Telecommunications Act of 1996: Accounting Safeguards under the Telecommunications Act of 1996, *Report and Order*, CC Docket No. 96-150, FCC 96-490 (rel. Dec. 24, 1996) (Accounting Safeguards Order).

[21] Accounting Safeguards Order at ¶ 265.

Aliant is required to make an exogenous adjustment to its price cap reflecting the sale of those assets, when it makes the asset transfer.[22]

IV. ORDERING CLAUSE

11. Accordingly, IT IS ORDERED, pursuant to Section 4(i), and 218-220 of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 32.27(c) of the Commission's Rules, 47 C.F.R. § 32.27(c), that the petition for waiver IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Kenneth P. Moran
Chief, Accounting and Audits Division

[22] *See* Letter dated November 15, 1997, from Tony S. Lee to Mr. Kenneth M. Ackerman; telefax dated october 6, 1997, from Denise Ackerman to Ron Kaufman.